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Notes for the Minister of Justice

Appearance before the
House of Commons Standing Committee on Justice and Human Rights
Bill C-36

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CHECK AGAINST DELIVERY

Thank you Mr. Chair and Members of the Standing Committee for inviting me to appear again before you today on the matter of Bill C-36, the *Anit-Terrorism Act*.

Since the day this bill was introduced we have heard from members of this committee, members of the Senate Special Committee, witnesses who have come before both committees and others about what they do and do not like about this bill. It is an understatement to say that there has been no shortage of debate on this Bill.

While I do not agree with everything that has been said about this bill, I would like to say that it has been important to debate this bill thoroughly because it does deal with fundamental issues of human security and rights and freedoms. To pass this Bill in the absence of an extensive debate would have been inappropriate and careless.

Furthermore, the debate has been thoughtful and helpful to my cabinet colleagues and me. By this, I mean that by making your concerns known in the House, in Committee and publicly, you have allowed us to come here today and respond directly to you and present you with the government's thinking about proposed amendments.

I cannot be clearer than to say that I am thankful to you and our colleagues in the Senate for the work you have all done. You have not only helped to shape the debate on Bill C-36, you have had an important influence on the amendments that are being proposed by the government.

All of you have expressed a desire to know what kind of amendments will be proposed by the government later this afternoon.

As you consider the amendments the government is proposing, I hope that you will do so in the spirit in which they are being proposed: first, as evidence of this government's commitment to listening to members of this committee and to the Senate committee and second, of our commitment to passing a bill that reflects our values as Canadians while providing an effective legislative package to fight terrorism.

Before I outline the government's proposed amendments, I would like to spend a few minutes reminding all of us of why this Bill is necessary. This is an area about which I feel very strongly.

Current laws

Our current laws allow us to investigate terrorism and prosecute those who have engaged in various specific activities generally associated with terrorism, including hijacking, murder and sabotage. However, these and other laws are not sufficient.

Perhaps the greatest gap in the current laws is created by the necessity of preventing terrorist acts. Our laws must reflect fully our intention to prevent terrorist activity and currently, they do not.

Under our current laws, we can convict terrorists who actually engage in acts of violence if we are able to identify and apprehend them after their acts have been committed.

However, I think we all agree that Canadians have a right to expect their government to do everything it can to prevent such horrific acts as those of September 11 from happening in the first place.

Additional investigative tools will help the gathering of information on terrorist groups before they engage in their attacks. The preventive arrest powers in this bill are an example of these tools. These powers will enable us to interfere with and destabilize terrorist groups who are in the planning stages of an attack.

The *Criminal Code* offences in C-36 will allow us to convict those who facilitate, participate in and direct terrorist activity and these must include preventive measures which are applicable whether or not the ultimate terrorist acts are carried out.

In addition to increased tools and more effective laws, Bill C-36 allows Canada to fulfill our international obligations. These include terrorist financing, terrorist bombings and use of other lethal weapons, and to the protection of United Nations and associated personnel.

Hate Crime

At the same time as we address terrorism by improving our tools and laws, we need provisions that enhance our ability to fight hatred and discrimination.

September 11th was horrific is many ways. Not only did it result in the murder of many innocent victims; it has led to a growing distrust and, in some cases, acts of violence against ethnic groups and individuals.

As the Prime Minister has said many times since September 11th, this is not a war against one ethnicity or religion. This is a war against evil and terror.

Nevertheless, we have heard from witnesses who came before you and said clearly that they fear being targeted. This is something that this government is working hard to address. Let me be clear - Canadians - whatever their ethnic or cultural background - must benefit from the protection accorded to all Canadians to be free of discrimination.

So, as we fight terror, we need to send a strong signal that behaviour such as destroying or damaging a church, mosque or temple, or interfering with religious activities, is completely unacceptable in Canada.

Communication of hate messages using new technologies, such as the Internet, is a discriminatory

practice under Canadian Human Rights Act and will not be tolerated.

This is a brief overview of some of the key reasons that the measures in Bill C-36 are necessary. I would note as well that in putting forward Bill C-36 we are acting in concert with other countries that are strengthening their laws against terrorism.

Among these are the United States, the United Kingdom, and France. The threat posed by terrorism, and the need for countries to work together and to strengthen their laws has been widely recognized and is being acted upon.

As requested, the Department of Justice has provided the Clerk of the Committee with extensive materials on the nature of the terrorist threat and on the nature of the international response, including the legislative responses of our allies named above. I urge you to examine these materials.

Explanation of the amendments

Moving on now to the text of Bill C-36 itself, it is my intention to explain some of the amendments we are proposing this afternoon for consideration by this Committee. These amendments are being proposed in order to improve and clarify the legislation.

Again, I would like to emphasize that much of what we are proposing reflects the comments and concerns that have been put forward from members of this Committee, members of the Senate Special Committee on Anti-terrorism and witnesses who have before this committee.

Definition of terrorist activity

Let me begin with the definition of "terrorist activity". As this definition is a key element of the Bill, and the term is used in many of the Bill's other provisions, no one should be surprised with the level of detailed scrutiny that has been paid to this element.

One of the main concerns that has been expressed relates to the exclusion of "lawful advocacy, protest, dissent or stoppage of work" from the scope of the definition. It has always been the Government's intent that lawful democratic dissent and advocacy be protected and excluded from the definition.

Some have questioned whether, because of the use of the word "lawful", the definition might be construed and interpreted such that activities of this type that include unlawful activities, such as assault, trespass and minor property damage, might amount to terrorism. We have further examined this provision and we agree that the provision could be misinterpreted.

Therefore the Government will propose removing the word "lawful". This would not have the effect of making otherwise unlawful protests lawful.

It would, however, clarify that this specific exclusion from the definition of "terrorist activity" applies whether or not the advocacy, protest, dissent or stoppage of work is lawful. What is important is whether the activities meet the high standards of the definition of "terrorist activity", and not whether the particular activity is lawful or, not, under some other law.

For similar reasons, we will be proposing other minor amendments to the definition to clarify that an expression of political, religious or ideological beliefs alone is not a "terrorist activity," unless it is part of a larger conduct that meets all of the requirements of the definition of "terrorist activity, including that it is intended to intimidate the public or compel a government, and intentionally causes death or serious physical harm to people. We also propose to clarify that the illegal acts of a few cannot be construed to taint the legitimacy of other protestors.

Another concern that has been raised in this Committee's hearings, the Senate Committee's hearings, and elsewhere, about the definition of terrorist activity is the possibility that the anti-terrorist enforcement measures in the Bill could be used to target particular cultural, religious or ethnic groups.

We must be very sensitive to this criticism and to the feelings of Canadians who have no connection at all with terrorist activity, but who nevertheless may feel that they have come under suspicion merely because of their cultural, religious or ethnic backgrounds.

It has been suggested that part of the difficulty in this regard is posed by the use of the words "political, religious, or ideological purpose, objective or cause" which refers to the motivations for terrorist activity in the definition.

I do not agree with this. In no way do these words target any particular cultural, religious or ethnic groups or political or ideological causes. Rather, the words recognize the various motivations that underlie the unacceptable activities that are set out in the definition of terrorism in Bill C-36.

The words are **limiting** words that help to distinguish terrorist activities from other forms of criminality that are intended to intimidate people by the use of violence. These words are important to appropriately define and limit the scope of Bill C-36 to deal with terrorism.

Nevertheless, I believe that we can and should take additional measures to help ensure that the enforcement provisions in the Bill are not interpreted or applied in a discriminatory manner or in a manner that would suppress democratic rights.

The government will therefore be proposing the addition of a new provision that will stipulate, for greater certainty, that the definition of terrorist activity would not apply to the expression of political, religious or ideological ideas that are not intended to cause the various forms of harm set out in the definition.

Review mechanisms

Proper review and oversight of the powers provided for in Bill C-36 help ensure that the measures in Bill C-36 are applied appropriately. In this regard, I would emphasize that various review mechanisms already established under Canadian law would apply to the exercise of powers under the Bill. This would include, for example, such mechanisms as complaints investigated by the Commission for Public Complaints Against the RCMP, and the various complaint and review mechanisms that apply with respect to police forces under provincial jurisdiction.

Significant powers under this Bill are subject to judicial supervision and, in many cases, this is in addition to explicit ministerial review and supervision powers. As well, the provisions in the Bill will be subject to a full review by Parliament within three years.

Annual Report

Some have made a strong case, however, that additional monitoring is necessary. Therefore, following models that exist elsewhere in Canadian criminal law, we will be proposing a requirement for an annual report.

This provision would require the Attorney General of Canada, and those of the provinces, to report publicly once a year on the exercise of the C-36 powers of **investigative hearings** that took place under their jurisdiction.

The provision would further require the Attorney General of Canada, and those of the provinces, as well as the Solicitor General of Canada and the ministers responsible for policing in the provinces,

to each report publicly once a year on the exercise of the C-36 powers of **preventive arrest** that took place under their jurisdiction. Detailed information to be reported in each case would be specified in the law.

Not only would this information provide an annual check on the use of these new provisions, but it would also inform the Parliamentary review which is to occur within three years.

This report mechanism is similar to that which exists currently under the Part VI of the *Criminal Code*, dealing with interception of communications.

It is also similar to reporting provisions relating to the use of the limited justification for otherwise illegal law enforcement activities that are part of Bill C-24 that was passed by the House of Commons earlier this year.

Sunset Clause

It has also been suggested that a sunset clause will give additional impetus for close re-examination of the provisions of the Bill. The thinking on this point is that Parliament should be required to turn its mind directly to whether certain provisions of the Bill are still required after a given period of time.

As you know, the government does not see the need for a sunset clause for the entire bill. First, a sunset clause on the entire bill would call into question our commitment to meet our ongoing international obligations.

Second, the need to maintain vigilance against terrorism is a continuous one and the measures in the Bill are balanced, reasonable and subject to significant safeguards. Furthermore, the provisions of Bill C-36 comply with the *Canadian Charter of Rights and Freedoms* and therefore, a sunset clause is not necessary to ensure their compliance.

At the same time I recognize that certain aspects of Bill C-36 have given rise to some concern. I agree that certain powers under the Bill should be subject to close monitoring. As such, in addition to proposing amendments to make investigative hearings and preventive arrest powers subject to an annual report, as an additional safeguard, the Government will also propose that these two measures be subject to a sunset clause under which they would expire after five years.

This expiry would be subject, however, to the ability of Parliament to extend the provisions, on resolutions adopted by a majority of each Chamber, for additional periods of time; but no period may ever exceed five years.

The Parliamentary power to extend the provisions responds to the concern that the expiry could otherwise occur in urgent circumstances where it is clear that the provisions should continue. At the same time, the requirement for resolutions of each Chamber requires Parliament to turn its mind directly to the issue of continuation of the powers.

Certificates to prohibit disclosure of information

Another area of the Bill that has caused some concern is the certificates that would be issued by the Attorney General under the *Canada Evidence Act*, the *Access to Information Act*, the *Privacy Act* and other Acts in order to prohibit disclosure of sensitive information relating to international relations, national defence or security.

It has been suggested that this power has not been appropriately circumscribed and subject to safeguards. I continue to believe that the power to issue such certificates is a vital addition to our ability to prevent the disclosure of information injurious to international relations, national defence

or security.

While there currently exist procedures to protect this information, the guaranteed protection from disclosure offered by the certificates is necessary, above all, with respect to security and intelligence information shared with Canada by other countries.

At the same time, I am aware of the criticism that the provisions could be more carefully tailored and should be subject to review. For this reason, I am proposing that the certificates have a maximum lifespan of 15 years, unless re-issued.

After its expiry, the effect of the certificate would no longer apply and the information to which it applied would be subject to the normal provisions of the law concerning disclosure or non-disclosure.

Further, I am proposing that the issuance of a certificate should be reviewable by a judge of the Federal Court of Appeal.

Finally, each certificate would now be published in the *Canada Gazette*.

Other amendments

I am proposing a number of adjustments to other areas of the Bill to improve its operation. These include changing the name of "List of terrorists" to "Listed entities". While this change is merely one of name, it eliminates what might otherwise be seen as excessively blunt language in the Bill.

We also propose moving the definition of "facilitate" from section 83.01 so that it appears in conjunction with the facilitation offence at 83.19. This responds to criticism that the separation of the definition from the offence was confusing in this particular instance, and failed to emphasize clearly that facilitation must be 'knowing'.

These and other technical changes will be the subject of motions at clause-by-clause proceedings before this Committee.

Many of the amendments I have talked about in my remarks today respond to issues raised by the Senate, our caucus colleagues, the Canadian Bar Association and other witnesses.

With that, I shall bring my opening remarks to a close. Again, thank you for your close attention to Bill C-36 - your hard work and that of the Senate Special Committee have been invaluable to the Government.

We are looking forward to your deliberations on the amendments we will put before you this afternoon. I look forward to the passage of Bill C-36 as a vital step in improving our ability to address terrorism with effective and fair legislation.

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